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**TRANSCRIPT OF RECORD**

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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1925**

**No. 333**

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**MA-KING PRODUCTS COMPANY, APPELLANT,**

**vs.**

**DAVID H. BLAIR, COMMISSIONER OF INTERNAL  
REVENUE OF THE UNITED STATES**

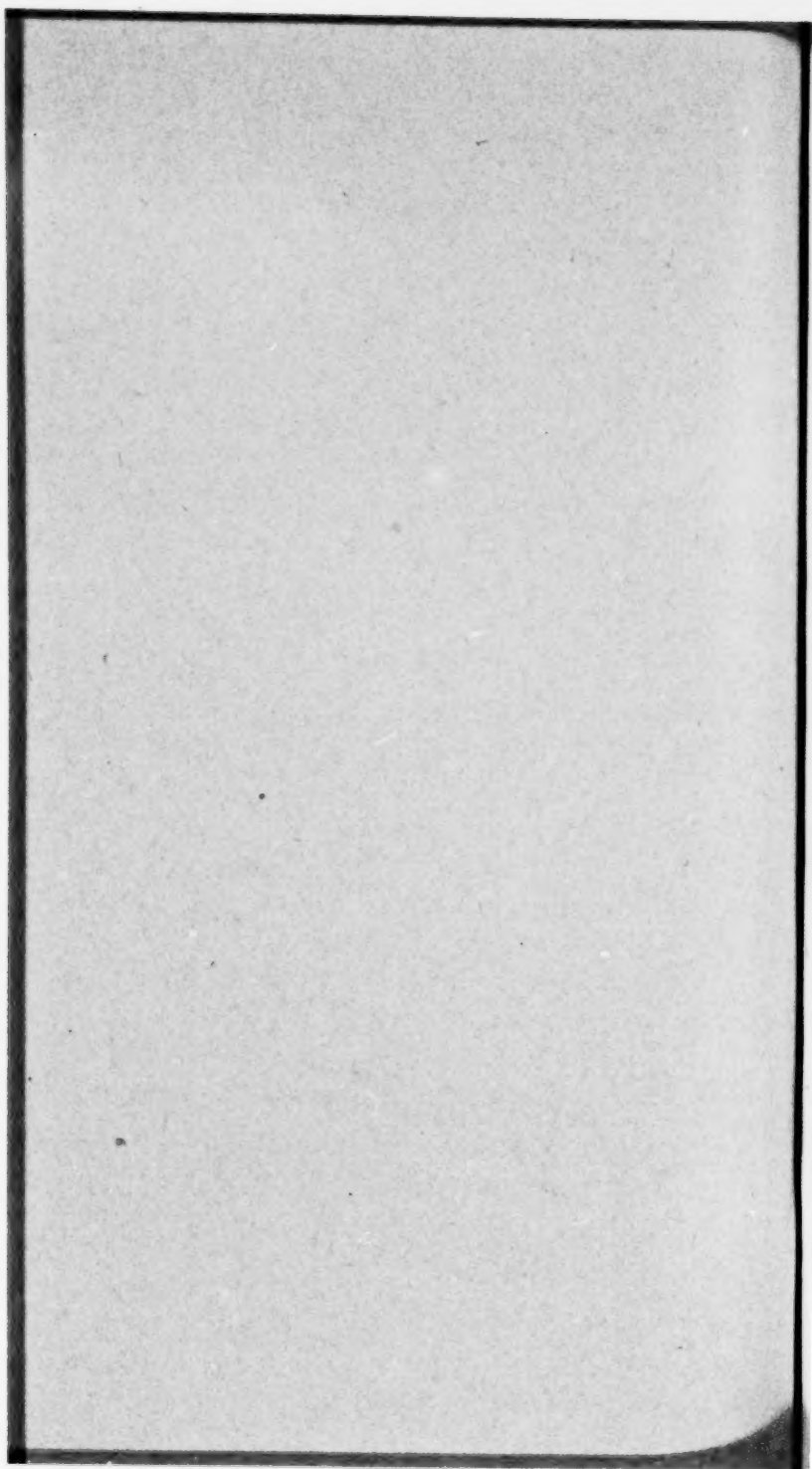
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**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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**FILED MARCH 27, 1925**

**(30,984)**



(30,984)

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[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

In Equity. No. 1083

MA-KING PRODUCTS COMPANY, a Corporation Organized and Existing  
under the Laws of the State of New Jersey, Plaintiff,

vs.

DAVID H. BLAIR, Commissioner of Internal Revenue of the United  
States, Defendant

**DOCKET ENTRIES**

1924

- April 8. Bill Filed.  
" 8. Præcipe for Subpoena Filed.  
" 8. Subpoena issued.  
" 21. Subpoena returned served with Bill of Complaint on David  
H. Blair, Commissioner of Internal Revenue, by handing  
to and leaving a true and attested copy thereof with  
Walter Lyon, United States Attorney, who accepts serv-  
ice thereof at Pittsburgh, April 21st, 1924.  
May 21. Motion to dismiss bill filed and entered.  
[fol. 2]  
June 11. Answer filed.  
" 28. Hearing on Bill and answer entered.  
" 28. Witness sworn for Plaintiff (3).  
" 28. Witness sworn for Defendant (2).  
" 28. Memo. of hearing filed.  
July 11. Præcipe for appearance of Louis Little and B. D. Oliensis  
for Plaintiff filed.  
" 11. Testimony filed.  
" 22. Order dismissing Bill of Complaint at cost of Plaintiff.  
Aug. 14. Order granting exception to the Decree dismissing the  
Bill of Complaint filed and entered.  
Sept. 12. Petition of Complaint for appeal and order allowing same  
filed and entered; Assignment of Error filed.  
Sept. 12. Plaintiff's præcipe re record on Appeal filed.  
Sept. 13. Citation awarded and issued.  
Sept. 17. Service of citation accepted by Walter Lyon, United States  
Attorney.  
Sept. 18. Bond on appeal approved and filed.

[Title omitted]

## BILL OF COMPLAINT—Filed April 8, 1924

To the Honorable the Judges of the said Court:

Your orator, the Ma-King Products Company, a corporation organized and existing under the laws of the State of New Jersey, complains and says:

1. That your orator is a corporation, organized, chartered, and existing under the laws of the State of New Jersey, and as such a citizen of the said State, and is duly registered with the Secretary of the Commonwealth of the State of Pennsylvania, and duly authorized to transact business in said State, in accordance with the law in such cases made and provided.

2. That by the terms of its charter aforesaid, it is authorized and empowered to engage in the business of making, producing, distilling, [fol. 4] distributing, selling, and otherwise dealing in alcohol, denatured alcohol, and the kindred products thereof.

3. That the said defendant, David H. Blair, is the Commissioner of Internal Revenue of the United States, residing at Washington, D. C., and, as such, is empowered and authorized under the laws of the United States, to issue permits for the establishment, bonding, and operation of industrial alcohol plants, denaturing plants and bonded warehouses for the storing and safekeeping of alcohol and other commodities containing alcoholic contents.

4. That on or about the 26th day of October, 1923, your orator filed with the Collector of Internal Revenue of the 23rd District of Pennsylvania at Pittsburgh, Pa., its application for a permit to operate a denaturing plant at No. 925 Bowen Street, in the City of Pittsburgh, in the State aforesaid. Said application was duly made in accordance with the United States laws and regulations in such case made and provided and was accompanied by a surety bond of duly approved surety corporation, the Amsterdam Casualty Company, in the amount of \$100,000.00, containing all conditions and provisos required by law and regulation, as well as by the requisite and necessary plans and sketches of your orator's plant, its equipment and general layout erected and established at the address aforesaid, at a great and considerable expense to your orator.

5. That your orator also filed, then and there, with the said Collector of Internal Revenue, a copy of the Minutes of your orator corporation showing the election of its officers and directors and a copy of a Resolution, duly certified by its Secretary, giving to and conferring [fol. 5] ferring upon your orator's President, Harry J. Bogash, the right to apply for said permit and to sign any and all papers necessary and requisite in connection therewith; and has in every respect

complied with every and all laws, regulations, and requirements appertaining to such application.

6. That on or about Nov. 8th, 1923, the said Collector of Internal Revenue at Pittsburgh, after due consideration of your orator's application and inspection of its plant, equipment, and general lay-out, recommended to the said defendant, David H. Blair, Commissioner of Internal Revenue of the United States, that the said application of your orator be approved.

7. That the said defendant, David H. Blair, under and by virtue of his office of Commissioner of Internal Revenue of the United States, as aforesaid, acting by and through Roy A. Haynes, Prohibition Commissioner of the United States, despite the recommendation of the Collector of Internal Revenue of the 23rd District of Pennsylvania, as aforesaid, arbitrarily, illegally and without any reason or warrant in law or in fact, on or about March 8th, 1924, disapproved your orator's application aforesaid and declined and refused to issue the permit prayed for by your orator.

8. That by reason of the said arbitrary, illegal, and unreasonable disapproval of your orator's application and the refusal to issue the permit as aforesaid, your orator has been greatly prejudiced in its rights and has suffered and is suffering great and irreparable damage.

Your orator therefore prays your Honorable Court for equitable relief as follows:

[fol. 6] (a) That your Honorable Court review the action aforesaid of the said David H. Blair, Commissioner of Internal Revenue of the United States.

(b) That your Honorable Court reverse the findings of the said Commissioner in connection with the disapproval of your orator's application aforesaid, both as to facts and to law.

(c) That your Honorable Court order, decree, and direct the said David H. Blair, United States Commissioner of Internal Revenue, to approve your orator's application and to grant it the permit prayed for.

(d) Such other and further relief as may be deemed meet and proper by your Honorable Court in the premises.

Churchhill Mehard, Solicitor for Plaintiff.

Sworn to by Harry J. Bogash. Jurat omitted in printing.

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[fol. 7] IN UNITED STATES DISTRICT COURT

ANSWER—Filed June 11, 1924

To the Honorable the Judges of the said Court:

David H. Blair, Commissioner of the Internal Revenue of the United States, respondent, makes answer as follows:

1. The averments of the first paragraph of this Bill in Equity are admitted.

2. The averments of the second paragraph of this Bill in Equity are admitted.

3. The averments of the third paragraph of this Bill in Equity are admitted.

4. The averments of the fourth paragraph of this Bill in Equity are admitted.

5. The averments of the fifth paragraph of this Bill in Equity are admitted.

6. The averments of the sixth paragraph of this Bill in Equity are admitted.

7. The averments of the seventh paragraph of this Bill in Equity are denied and on the contrary, it is averred that your respondent, as the result of an investigation conducted by respondent's agents, is informed that Harry J. Bogash and Joseph H. Klutseh, respectively, President and Secretary-Treasurer of the petitioning company, are not individually, or as officers of said petitioner, entitled to be entrusted with a permit of the nature and kind set forth in said Bill of Complaint, or any other permit under the provisions of the [fol. 8] National Prohibition Act, and that, therefore, your respondent, upon said information, acted under full warrant of law and fact in disapproving the application of the petitioning company and declining and refusing to issue the permit prayed for by the petitioners.

8. The averments of the eighth paragraph of this Bill in Equity are denied, and on the contrary it is averred that the petitioning company has in no way been prejudiced in its rights and in no way has suffered any damage by reason of the acts of your respondent.

Wherefore, your respondent respectfully prays your Honorable Court to dismiss the said Bill in Equity at the cost of the plaintiff.

David H. Blair.

Sworn to by David H. Blair. Jurat omitted in printing.



[fol. 9]

## IN UNITED STATES DISTRICT COURT

Honorable W. H. S. Thomson, J., and Honorable F. P. Schoonmaker,  
J., at Pittsburgh, Pennsylvania

**Statement of Evidence**—June 28, 1924

## APPEARANCES OF COUNSEL

For complainant: Churchill B. Mehard, Esq.

For respondent: George V. Moore, Esq., Assistant United States  
Attorney.

## OFFER IN EVIDENCE

Mr. Mehard: I offer in evidence the first and sixth paragraphs  
of the Bill as admitted in the Answer.

HARRY J. BOGASH, called on behalf of complainant, having been  
duly sworn, testified as follows:

Direct examination.

Mr. Mehard:

Q. Mr. Bogash, where do you live?

A. 4714 North Camac Street, Philadelphia.

Q. How long have you lived in Philadelphia?

A. For the past twenty years.

Q. You are the president of the Ma-King Products Company, the  
applicant in this case?

A. I am.

Q. What is your business?

A. I have been a licensed real estate broker in Philadelphia since  
1915.

Q. Have you any other business in addition to the real estate  
brokerage business?

A. Except this application right now, none other.

[fol. 10] Q. In connection with your real estate business, have you  
any connection with building and loan associations?

A. Yes. I am conveyancer for a few building and loan associa-  
tions.

Q. Who is the secretary and treasurer of the Ma-King Products  
Company?

A. Mr. Joseph H. Klutsch.

Q. And this corporation was organized by you, or at your instance,  
was it?

A. That's right.

Q. Have you established a plant for the manufacture of denatured alcohol?

A. Yes, at 925 Bowen Street, Pittsburgh, North Side.

Q. Was that plant established and equipped prior to your application?

A. Yes, it was.

Q. What investment has been made in that?

A. I couldn't say, but roughly, around \$35,000.

Q. Are you prepared, or is the corporation prepared, in the event of the granting of a permit, to proceed with the manufacture and sale of denatured alcohol?

A. We are ready; yes, sir.

Q. Have you, within one year prior to the making of this application, or prior to this date, violated terms of any permit issued under the prohibition act or any law of the United States or any law of any state?

A. I have never violated any law of the United States or of any state, not only one year, but never.

Q. Have you ever in your life been accused of any crime or offense?

A. Never.

[fol. 11] Q. Against the United States or the laws of any of the states?

A. I have never been.

Q. Please state whether you have now or ever have had, any connection, directly or indirectly, with the manufacture, transportation or sale of alcoholic liquor, legally or illegally?

A. I never have.

Q. Had you any connection with the liquor business prior to prohibition?

A. No, sir.

Q. What was your idea in organizing a plant for the manufacture of denatured alcohol and applying for a permit to manufacture the same?

A. Primarily to invest some of my money, out of the real estate business, and make money out of it.

Q. As a commercial enterprise?

A. As a commercial enterprise.

Q. Are you familiar with the uses for denatured alcohol commercially?

A. Fairly. I have an idea, yes.

Q. Have you, or has the Ma-King Products Company, in the event of the granting of a permit, a market for its product?

A. We have, yes.

Q. Have you any knowledge of any reason why a permit should be refused on your application?

A. No, I have not. I haven't any reason to know why a permit should be refused.

Q. How long have you known Mr. Klutsch?

A. He was associated with me as a partner in the real estate business since 1916 until the early part of 1923.

Q. Have you known him intimately during that time?

A. Yes.

[fol. 12] Q. Has Mr. Klutsch, to your knowledge, ever been accused of any violation of any law?

A. To my knowledge, he never has.

Cross-examination.

Mr. Moore:

Q. What other parties are interested in the Ma-King Products Company as officers or directors?

A. Benjamin H. Alperdt is the other director. He is in the automobile accessory business at 2007 South Broad Street.

Q. Yourself, Mr. Klutsch and Mr. Alperdt are the officers and directors?

A. Yes.

Q. Of this concern?

A. Yes.

Q. Your interest in the concern covers how many shares of stock?

A. My interest covers 500 shares of stock.

Q. What other outstanding stock is there and by whom is it held?

A. Mr. Klutsch has 100 shares, and Mr. Alperdt has 100 shares. The rest are still unsold.

Q. Is there any other outstanding stock, treasury stock?

A. There is a hundred thousand dollars worth of shares, a thousand shares.

Q. Then there are 700 shares issued and 300 unissued shares?

A. Yes.

A. Do you know O. Evans Mikesell?

A. Yes. I spoke to him here. He went over to the plant to investigate the plant. Yes, I met him.

Q. Mr. Mikesell advised you that he was investigating your application for a permit?

[fol. 13] A. That's correct.

Q. What did you tell him as to the number of shares of stock held by Mr. Klutsch and Mr. Alperdt?

A. I told him the same thing, five thousand dollars' worth each.

Q. Didn't you tell Mr. Mikesell that Mr. Klutsch and Mr. Alperdt each had 50 shares of stock?

A. That's right. That would be five thousand dollars' worth. Fifty shares at \$100 par value is \$5,000.

Q. What is your age?

A. I am thirty.

Q. What is your financial standing at the present time?

A. If I were to liquidate, to close out, I would be worth probably around \$100,000.

Q. I think you so stated to Mr. Mikesell, that you are worth about \$100,000.

A. Yes.

Q. Your present business is real estate?

A. Yes.

Q. What other businesses have you been engaged in?

A. I have never been in any other business at all, except what is incidental to the real estate business—insurance and so on.

Q. What building and loan association are you connected with?

A. With the Loyalty Building and Loan Association, the United, the Baker Building and Loan Association, and the Duell Building and Loan Association.

Q. In the Duell Building and Loan Association, with what persons are you associated? Who are the officers? What is your interest or relationship with the Duell Building and Loan Association?

A. I am the conveyancer.

[fol. 14] Q. Tell us the officers.

A. At the present time the officers are Jules Isaacs—that is, the past month—before that Charles Haimowitz was president, and the secretary was S. M. Citron; the vice-president was Samuel Seidell; the solicitor, Joseph H. Lieberman.

Q. Did you name the treasurer?

A. Herman M. Fuerstein, treasurer.

Q. Do you recall the directors?

A. I think I can name most of them.

Q. Let us have them.

Mr. Mehard: I want to be entirely fair and go into this whole matter as to the facts, but I would like to have an offer by the Government as to what this examination is.

Mr. Moore: I believe this examination goes to the issue raised by the Answer to the Bill, wherein the respondent, the Internal Revenue Commissioner, asserts that Mr. Bogash and Mr. Klutsch are not qualified personally for the granting or receipt of a permit. We expect to show in the evidence to be produced by the Government, that Mr. Bogash is associated intimately and in a business way, in a matter of financial moment to him, with all the parties he has named and the directors whom he is about to name. We expect to show that the large majority, or a goodly number of the officers and directors of the Duell Building and Loan Association, are persons who have been engaged in the liquor business since the Prohibition Act has been operative, that some of them have held permits, which have been revoked for violation of the conditions of the permits, and that the reputation and interest of several of these named associates, [fol. 15] business associates, indicate that they are engaged in bootlegging activities.

Mr. Mehard. Objected to as irrelevant, incompetent and immaterial.

The Court: This applicant is not being charged with any offense in this proceeding, but is making application for a special privilege under the Act of Congress. Inasmuch as the Act itself does not undertake to prescribe the conditions which would entitle an applicant to the special privilege, a very wide discretion must be vested in the Commissioner; either that, or no person making application, without reference to qualification, would be entitled to the special privilege. That being so, it would seem as though, this being a hear-

ing de novo, putting ourselves as nearly as we could in the place of the Commissioner, we should consider the facts, the man's character, the character of the business he proposes to establish, the character of the conditions under which he proposes to establish, the relations which the applicant may bear to others, as throwing light on his fitness for the particular application, we think it would be competent. The objection is therefore overruled, and an exception noted to the complainant.

Mr. Moore:

Q. Will you name as you recall, the directors of the Duell Association?

A. Phillip Sklar, Thornton Beyer, Benjamin Alperdt, Dr. Benjamin Benedict, Dr. J. M. Korrothers, Joseph C. Hendler, H. M. Feurstein, Joseph H. Klutsch, Harry J. Bogash, Joseph H. Lieberman and Jules Isaacs. That is about all I can remember.

[fol. 16] Q. Have you named them all?

A. I have named all I recall. There may be one or two more altogether. I have all the information right here.

Q. Is there a man by the name of Meyer Benedict?

A. Yes.

Q. Is he a director?

A. Yes, he is a director.

Q. I ask you if you know what business Mr. Meyer Benedict was engaged in in 1920?

A. I understand he had a permit of some kind or other, under the National Prohibition Act.

Q. Did you have any interest in his permit, or his application for that permit?

A. I certainly did not.

Q. I show you a paper marked Government Exhibit No. 1, and ask you if you have seen that paper and know what that is.

A. I saw that.

Q. I ask you if your signature appears down here?

A. Yes, I am a witness to it. I have no interest in it.

Q. I ask you if you had any interest in the bond or the application for the permit, or the permit, held by Meyer Benedict, other than as a witness?

A. I had no financial interest in it whatsoever. I was a witness on the paper. My signature appears on hundreds of papers that people ask me to witness.

Q. You operate your real estate business under what name?

A. Bogash & Klutsch.

Q. At the present time you so operate?

A. I am operating under the name of Harry J. Bogash. Mr. Klutsch is in business for himself now.

Q. Who conducts the rental division of your real estate business?

[fol. 17] A. Of my own?

Q. Yes.

A. You mean, the actual collections?

Q. Yes.

A. At the present time, I don't have so much real estate on hand; they come in by mail, most of them.

Q. You handle it yourself?

A. Yes.

Q. You don't have an agency by the name of Albert Greenfield & Company that handles your rental business?

A. No.

Q. Did you state on direct-examination what the business of Benjamin Alperdt was?

A. Automobile accessories.

Q. What address, do you know?

A. 2005 or 2007 South Broad Street.

Q. How long have you known him?

A. For about five years.

Q. Have you had any business association with him prior to the present application?

A. None other except in building and loan associations.

Q. Will you tell us the business interests of Charles Haimitz, President of the Duell Association?

A. From what I know of him, he finances mortgages.

Q. Do you know of him being engaged in the liquor business, regularly or irregularly, since the prohibition act?

A. No.

Q. Samuel Lazarre, can you tell us what his business activities are, in addition to the Duell Association?

A. I don't know his business.

[fol. 18] Q. He is the man you named as vice-president.

A. No; that was Samuel Seidell.

Q. Did you name Samuel Lazarre as an officer?

A. No, I didn't. He is not on the board of directors.

Q. What can you tell us about Mr. Seidell's activities?

A. The last I knew of it, he was connected with Largman, Oppenheim & Co., textile.

Q. Do you know of any other business connection of Mr. Seidell? Will you tell us what that concern is that you do know what their business is?

A. Textile.

Q. Don't you know that Mr. Seidell is president of the Penn Distilling Company?

A. No, I don't.

Q. In Philadelphia?

A. I don't know.

Q. Don't you know that he is now under indictment for alleged violations of the provisions of the National Prohibition Act?

A. No, I don't.

Q. Samuel Citron, what are his business interests, in addition—

A. He was an accountant when he came into the association. Later I do know he had some interest in a distillery; at a later date. He has been our secretary for the past seven months.

Q. With what distillery was he connected?

A. I think it is called the Glenwood Distillery.

Q. Do you know of any difficulty as to the permit that distillery had when he was connected with it?

A. No.

Q. Don't you know they lost their permit in 1922?

A. No.

[fol. 19] Q. While Mr. Citron was the former secretary?

A. No, I don't.

Q. This man Meyer Benedict upon whose bond you are a witness—

A. I placed that bond through the Fidelity Company. That is how I came to witness it. I place insurance and bonds.

Q. Do you know of any activity on the part of Mr. Benedict as a holder of a permit?

A. No, I don't. I just know he had a permit at one time.

Q. Then you did not know of any revocation of his permit which he held as a basic permit holder?

A. No. That has been some time ago. His permit was a long time ago.

Q. Did you mention Maurice J. Meixler as a director of the Duell?

A. I didn't, no.

Q. You know that he has been a director?

A. He might have been at some time in the past. He is stockholder, but I don't remember of his being a director.

Q. Do you know the activities of Mr. Meixler as regards his being or having been a permit holder under the National Prohibition Act?

A. No, I don't.

Q. Do you know of a revocation of his permit, or a permit of a distillery of which he was vice-president at the time?

A. I don't know anything about it.

Mr. Mehard:

Q. You spoke of the third gentlemen who was connected with the Ma-King Products Company? What was his name?

A. Benjamin H. Alperdt.

[fol. 20] Q. I will ask you whether or not you and Mr. Klutsch and Mr. Alperdt in any instance, any one of you, held any of the stock of the Ma-King Products Company, directly or indirectly, for the benefit of any other person?

A. We do not. They are all our own shares.

Q. This Duell Building and Loan Association, your connection with it — as a director and conveyancer?

A. My connection with it has been as a director and conveyancer ever since its organization.

Q. Do you receive a salary?

A. No, except for drawing up papers, mortgages, deeds and bonds, in connection with every settlement or conveyance.

Q. Aside from their being directors or officers of the Duell Building and Loan Association, have you any connection, directly or indirectly, with any of these gentlemen whom Mr. Moore has named?

A. None at all.

Q. Do you see or know them socially?

A. I saw them at meeting nights. They might drop in at the office and ask me about some real estate. On a few occasions I have purchased some property for some of the stockholders, on different occasions, but never except pertaining to my business, such as insurance, bonds, and so forth.

Q. Excepting in connection with such matters as the Benedict bond, for example, have you ever had any discussion with any of these gentlemen, regarding their activities, legal or illegal, in the liquor business?

A. I have never had any, except placing the bond itself through the Fidelity.

Q. When you made your application for this permit initially, or when the Ma-King Products Company did so, did you file with the [fol. 21] department letters as to your good character, and so on?

A. Yes; I gave them about ten or twelve letters of different people with whom I had been associated in business, and have — offices with them for five, six or seven years, and different title insurance companies with whom I have done business since 1915, showing the nature of the business I have done. I gave them to Dr. Doran, of the Prohibition unit at Washington.

Q. Where are those letters now?

A. Mr. Doran said he wanted to keep them. As far as I know, they are still in the hands of the Department, unless they were brought in here.

Mr. Moore:

Q. You applied for a permit to operate a denaturing plant?

A. Yes.

Q. I understood you to testify, on direct-examination, that you intended to manufacture alcohol?

A. No, I did not. A denaturing plant itself ought to indicate what it is.

Q. What was the process or the exact manufacture in which you intended to engage?

A. We intended to put out specially denatured alcohol; to have special denaturing permits. We have a gauger there. We have the formula for denaturing the alcohol.

Q. How did you anticipate obtaining the alcohol for the purpose of denaturing?

A. By applying for it under the regulations.

Q. You didn't intend to manufacture—

A. We don't intend to manufacture; under a denaturing permit a man only could tax alcohol, and under the supervision of the gauger denature it under the rules and regulations of title 3.

[fol. 22] Q. You have had no practical experience in the operation?

A. No, I have never been connected with it before.

Q. Neither have the other two associates?

A. No, they have had no practical experience before.

Q. Do you have any contract for employment in anticipation or



expectation, with an experienced person in the matter of denaturing alcohol?

A. No, I couldn't very well, in view of the long delay we have had. We were not sure whether we will get it or not.

Q. You made this application originally some time back?

A. Back in November 2nd of last year. We started in September.

JOSEPH H. KLUTSCH, a witness called on behalf of complainant, having been duly sworn, testified as follows:

Direct examination.

Mr. Mehard:

Q. Where do you live?

A. 1039 S. Fiftieth Street, Philadelphia.

Q. What is your business?

A. Real estate broker.

Q. You were formerly associated with Mr. Bogash in the real estate business?

A. I was.

Q. Have you any other business?

A. No, other than I am going to enter into this business venture with Mr. Bogash.

Q. In the Ma-King Company?

[fol. 23] A. Yes.

Q. You were also connected with some of these building and loan associations that have been mentioned?

A. I am connected with the Duell?

Q. What is your connection with it?

A. At the time that Mr. Bogash and I were together, we were both conveyancers for it, under the name of Bogash & Klutsch. Since we separated, we still hold the same office.

Q. You are still with Mr. Bogash as the conveyancers of that company?

A. Yes.

Q. Do you know the various officers and directors of the Duell Building and Loan Association?

A. I know them by meeting them at meetings, and so forth.

Q. Have you heard the testimony on cross-examination of Mr. Bogash, and the questions Mr. Moore asked him?

A. Yes.

Q. You have heard the different officers and directors of this company referred to as either known or suspected violators of the Prohibition Law, during this last cross-examination?

A. Yes.

Q. Had you any knowledge of those facts yourself?

A. None whatever.

Q. Had you heard of any of these gentlemen being so charged?

A. No, I did not.

Q. Have you any connection, except in your capacity as a conveyancer, for the Duell Building and Loan Association, with any of the officers or directors of the Duell Building and Loan Association?

[fol. 24] A. None whatever.

Q. Have you ever been convicted of, or charged with any violation of any prohibition law?

A. No, sir.

Q. Have you ever been in any trouble, or accused of any offense under any laws?

A. No.

Q. How old are you?

A. Twenty-nine.

Q. How long have you been in business in Philadelphia?

A. I would say for myself, approximately ten years.

Q. Have you any social or personal contact or association with any of these gentlemen who have been mentioned in the cross-examination?

A. No.

Q. Have you now, or have you at any time ever had any connection, directly or indirectly, with the liquor or alcohol business, legal or otherwise?

A. No, sir.

Q. Had you any interest, directly or indirectly, financial or otherwise, with any of the gentlemen who have been mentioned, who held permits under the National Prohibition Act?

A. No, sir.

Q. Have any of those gentlemen any connection, directly or indirectly, with the Ma-King Company?

A. No, sir.

Q. When this application for a dealcoholizing permit was made, did you, in connection with Mr. Bogash, furnish the Department of Internal Revenue, or the Prohibition Unit thereof, with letters as to your character and reputation?

A. Yes, certain letters.

[fol. 25] Q. And so far as you know, those letters are still in the possession of the Prohibition Unit?

A. Yes.

Cross-examination.

Mr. Moore:

Q. How long have you known the Duell Building and Loan Association?

A. Practically ever since it started.

Q. When was that?

A. I would say four years ago.

Q. Were you one of the original officials of that concern? Is its personnel now, as to officers and directors, practically the same as it was at the time of organization?

A. It has varied some.

Q. But not a great deal?

A. Substantial changes in there, a new secretary in there, for example.

Q. Mr. Klutch, from what address or place do you conduct your present business as a real estate broker?

A. 1039 S. Fiftieth Street.

Q. I thought that was your home address?

A. Yes.

Q. You maintain no office?

A. I maintain an office right there, but I have no sign. My business at the present time is handling mortgages and investments. I have people who invest in first mortgages, and I give my attention to that.

Q. What can you tell us as to your financial rating?

A. I would say at the present time somewhere around \$50,000.

Q. Have you been engaged in any other business than real estate?

A. No, outside of insurance or something like that.

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[fol. 26] JOSEPH H. LIEBERMAN, a witness called on behalf of Complainant, having been duly sworn, testified as follows:

Direct-examination.

Mr. Mehard:

Q. What is your profession?

A. I am a member of the bar of Philadelphia County, and a member of the Supreme Court of Pennsylvania.

Q. How long have you been practicing law?

A. I graduated from the University of Pennsylvania in 1917. I was admitted to the bar in the fall of that year. I have been practicing since then, except for a period when I was in the U. S. Navy.

Q. Do you know Mr. Harry J. Bogash?

A. I do.

Q. And Mr. Klutch?

A. I do.

Q. Do you know Mr. Alperdt, the other officer?

A. He is my father-in-law.

Q. Do you know these various gentlemen who have been mentioned in cross-examination by the United States Attorney?

A. I organized the Duell Building and Loan Association, and I am the present solicitor of that association. I have known the various men mentioned for a long while. Feurstein is a cousin of mine. Lazarre lived in the same neighborhood, in South Philadelphia, that I came from. I knew him first about fifteen years ago, when I was in high school. Haimwitz I first knew in the mortgage and investment business. He came to me, and I placed some money out on mortgages for him.

Q. Have you heard of these alleged violations of law by any of these gentlemen?

[fol. 27] A. I know Feurstein personally. As I said, he is my cousin and I know of my own knowledge that the man has never been charged with any violation of any law.

Q. I refer specifically to the gentleman mentioned by the United States Attorney in cross-examination, who we may safely assume, have been accused of alleged violations of the law.

A. If Mr. Moore will mention the names, I will tell him what I know about each of them.

Mr. Moore:

Q. Samuel Lazarre.

A. To my knowledge, he has never been charged with any violation of any law either the Prohibition Act or any other law.

Q. Mr. Seidell.

A. Seidell I know only since about a year after the inauguration of this association. I believe he became an officer. He had been a stockholder and had been coming to the meetings, and I knew that he was employed by Largman & Oppenheim, but I knew of no other transaction that he has been in since then.

Q. Samuel Citron.

A. Citron was an auditor and an accountant, and when we first organized the association, I went to him and asked him if he would take the secretaryship of the association. That is how he came into it.

Q. Meyer Benedict.

A. Meyer Benedict I only knew because he came into our office, and he was represented by one of the members who was associated in offices with me, under some charge in connection with Prohibition and I know of my own knowledge that the information that was filed in that case was quashed for some legal reason; I don't know what it was.

[fol. 28] Q. Morris Meixler.

A. I hardly knew him at all, except in connection with the association.

Mr. Mehard:

Q. Are you personally familiar with Mr. Bogash's association with these gentlemen?

A. I first met Bogash when we were mere youngsters. Our friendship continued through my high school and college days, and then he married my sister about three years ago.

Q. You were intimately associated personally and otherwise with him?

A. I have known him, as I say, since childhood, and I know very many people that know him.

Q. Do you know then just what Mr. Bogash's association or connection with these various gentlemen has been and is?

A. Only from meeting them at the various meetings, and meet-

ing them sometimes in my office, when they would place money out on mortgages. He would probably give me the application and I would get my client to come in and ask them if they had the money, take them out and look at the property, and place the mortgage for them, if they thought it a good investment.

Q. You say you know a great many people who know Mr. Bogash?

A. Very many.

Q. Do you know what Mr. Bogash's reputation for honesty and uprightness and as a law-abiding citizen is?

A. Very good.

Q. Have you ever heard any suspicion expressed, or any accusation made of Mr. Bogash, as to his having connection with the [fol. 29] liquor business, legally or illegally?

A. None whatever.

Q. To your knowledge, has Mr. Bogash ever had any connection, directly or indirectly, with the liquor business?

A. Positively none.

Q. Would you say that his acquaintance and association with these gentlemen who have been named, and whose names have been referred to with suspicion, was intimate or casual or slight?

A. He probably only met most of those men through this association, this building and loan association.

Q. How often does the board of directors of that association meet?

A. They meet once every month. In the event that there is a special meeting they may have had maybe two or three.

Q. Who conducts the daily routine business of the association?

A. I do.

Q. Under the authority of the board of directors?

A. Yes, sir; that is, the money is collected at the meeting, and it is deposited the next day by the treasurer. So far as the actual drawing of the mortgages and papers, Mr. Bogash or I, practically—either he or I dictate them to the stenographer, and he or I conduct the settlement.

Q. Do you know Mr. Klutsch?

A. I have known him for about seven years.

Q. Do you know the people that know him in a business and in a social way?

A. Very many.

Q. Do you know what his reputation is as to a law-abiding, upright and decent citizen?

[fol. 30] A. Very good.

Q. Have you ever heard Mr. Klutsch accused or suspected having any connection with the liquor business, legally or illegally?

A. Never.

Q. Do you know Mr. Alpredt?

A. As I say, he is my father-in-law. He is a man about fifty years of age; he is engaged in the wholesale candy business for a period of about twenty years. He has been in the automobile and motor accessory business now for a period of about five years. He is a man that has quite a lot of real estate holdings in Philadelphia, and has had them for the past fifteen years or so.

Q. Has Mr. Alpredt, to your knowledge, ever been accused of any violation, or suspected of any violation, of the Prohibition laws, or any other laws?

A. Never.

Q. Has he ever had any connection, to your knowledge, with the liquor business?

A. Never.

### Cross-examination.

Mr. Moore:

Q. You knew that Meyer Benedict applied for a basic Prohibition permit in 1921, in September?

A. That I did not know. I didn't know that he ever had a permit?

Q. My question was, do you know he made application for a permit?

A. No, I didn't know it until you asked Mr. Bogash that question.

Q. Were you his attorney in regard to any prohibition matter in September, 1921?

[fol. 31] A. I don't think so; but I know that Mr. Oleoseus (?), who was associated in the office with me—Mr. Oleoseus represented him, and I know of that charge.

Q. Who was this other attorney?

A. Mr. Oleoseus; he was associated in the office with me.

Q. I show you a paper marked Government Exhibit No. 2, and ask you to examine that, and tell us if you have seen that before, and if you know what that is.

A. I know that my name is on here as a notary.

Q. Is that your signature?

A. Yes.

Q. Will you tell us what you know of that paper and what your interest, if any, was in that application of Mr.——

A. I don't even recall that I ever took the affidavit. If you didn't show it to me now I wouldn't remember.

Q. But looking at it now, do you recall?

A. That is my signature. I don't recall the paper itself.

Q. Did you have any interest in the application of Mr. Benedict for a permit on September 28, 1921?

A. None whatever.

Q. Other than notary, if you did take that acknowledgment?

A. I probably took the acknowledgment.

Q. Did you have any interest other than as notary in that transaction?

A. No, sir.

Q. Do you remember taking any other affidavits, two of which were withdrawal applications for alcohol, under a permit that he held?

A. That I don't know. I know that Mr. Oleoseus represented him, and he came in the office, and I being the junior member in the

[fol. 32] office was the only notary in that office. It might be that I took an affidavit from him, but I don't know.

Q. On April 26, 1921, did you represent Meyer Benedict as counsel, give any legal aid or assistance in withdrawing 51 wine gallons against permit H-12821?

A. I don't think so. I am positive I gave him no aid or assistance. If I appear there as notary, it is probably only as a ministerial act there. I may have been called in.

Q. On the 21st day of May, 1921, did you represent him as counsel in an application for withdrawal of 250 wine gallons of alcohol against the same basic permit?

A. I don't think so.

Q. This man Citron, what did you say you knew about him, on direct-examination? I don't recall.

A. All I know is, that he was a graduate of the University of Pennsylvania; that he was an accountant, and had been employed by some fire concern, and that he was at that time going with my wife's sister, and later married her; that is, he is now my brother-in-law through marriage. I know he has been an accountant, and I was interested in him only for that reason, and I asked him to come into the association.

Q. In 1922, did you not know that he was secretary of the Glenwood Industrial Alcohol Distilling Company in Philadelphia?

A. I did.

Q. You knew that the company had a permit?

A. It was operating, so it must have had.

Q. Did you know that the permit of that company was revoked in the latter part of 1922?

A. That I did not know.

Q. Did you not represent a trucker?

[fol. 33] A. Is that a fair question? I represent a lot of people. I might have represented somebody for murder or arson.

Q. Did you not represent a trucker whose prosecution and apprehension while transporting alcohol led to the revocation of the permit of the Glenwood Distilling Company late in 1922?

A. I think I represented a man by the name of Petgen, I believe. I don't know whether he was the cause of the revocation of that permit or not, or whether the permit has even been revoked. That I don't know.

Complainant rests.

#### RESPONDENT'S CASE

LEO A. COXNER, a witness called on behalf of respondent, having been duly sworn, testified as follows:

Direct examination.

Mr. Moore:

Q. What is your occupation?

A. General Prohibition Agent.

Q. Stationed where?

A. Philadelphia.

Q. Do you know Harry J. Bogash, one of the petitioners for the permit on behalf of the Ma-King Products Company?

A. Just to see him here this morning.

Q. Do you know Mr. Klutsch, who appeared here this morning?

A. The first time I saw him was this morning.

Q. Did you make any investigation in your official capacity as [fol. 34] General Prohibition Agent, of the business interests or connections of Mr. Bogash and Mr. Klutsch, following their filing of an application as officers of the Ma-King Products Company, for a basic prohibition permit?

A. I did.

Q. What business interests, among others, did you learn they had?

A. My instruction for an investigation was mainly due to the records in different Government offices, the State Prohibition Director's office and files.

Q. Did you learn of their connection with any building and loan association, the Duell Building and Loan Association, among others?

A. I did.

Q. Did you learn the list of officers and directors?

A. Yes, sir.

Q. Did you learn that Mr. Seidell, Samuel Lazarre, Citron, Meyer Benedict and Morris G. Meixler were officers or directors of that concern?

A. I did.

Q. Did you make an investigation of the records of the Prohibition Department concerning any or all of those five parties named?

A. I did; accompanied by General Agent Quigley.

Q. Will you tell us what your investigation disclosed as to Samuel Citron?

A. Yes, sir. I know of my own knowledge that Samuel Citron is secretary of the Glenwood Industrial Alcohol Distillery, in 1921, 1922 and 1923. On April 26, 1922, Agent Quigley and myself seized twenty barrels of alcohol from that distillery. At that time he was secretary of the distillery. We arrested Petgen, the driver of the truck, and he pleaded guilty in Philadelphia. In 1923, we seized twenty-six barrels of alcohol. The plant ceased, and it is still [fol. 35] closed, as the result of that seizure.

Mr. Mehard: I take it that all this comes under my general objection.

Mr. Moore:

Q. As to the permit of that concern, do you know what happened to that permit?

A. It has been revoked.

Q. Tell us when.

A. Early this year, I would say—finally revoked. They have



been out of business since April of last year, closed as a result of the seizure.

Q. They were closed by the Prohibition Department, and Samuel Citron was then secretary?

A. Yes.

Q. What can you tell us about Meyer Benedict?

A. On investigation, he was a former basic permit holder, and his permit was revoked for a violation of the National Prohibition Act, and there was a large assessment of taxes. He compromised on the assessment, and paid a nominal sum to the Government.

Q. Do you remember approximately when the revocation of the permit occurred?

A. In 1921.

Q. What can you tell us about Morris G. Meixler?

A. He is now under indictment in a case that Quigley and myself have against him, charging the illegal sale on counterfeit paper of 3,000 cases of whiskey and 50 barrels of whiskey. He was vice-president of the Sherwood Distilling Company.

Q. What can you tell us as to the permit of the Sherwood Distillery?

A. The branch warehouse of the Sherwood Distillery has been re-[fol. 36]voked. They had an assessment made by us on a violation, and they compromised and settled for a large amount with the Government.

Q. Do you know whether the revocation of the permit of that concern occurred while Morris G. Meixler was acting as vice-president?

A. It did.

Q. What can you tell us as to your investigation as to Samuel Lazarre?

A. He held a basic permit as the agency for the Fleishman Industrial Distilling Company. I investigated him, in company with Agent Quigley, in 1921. They disposed of several thousand gallons of alcohol on counterfeit paper, and their permit was revoked.

Q. Mr. Seidell,—what did your investigation disclose as to him?

A. I know of my own knowledge that he is president of the Penn Distilling Company, and Samuel Seidell is now under indictment for violation of the National Prohibition Act, a conspiracy indictment. That distillery is now closed.

Cross-examination.

Mr. Mehard:

Q. Is it not a fact that when accusations are brought against persons or corporations for violations under the National Prohibition Act, their permits, if they exist, are immediately revoked by the Department?

A. No, sir; not without a hearing.

Q. Before whom is the hearing?

A. It is liable to be held by any official designated by the Commissioner at Washington.

Q. Is it before the officers of the Prohibition unit, or some officer of the Prohibition unit?

[fol. 37] A. Not necessarily. It is sometimes designated by the Commissioner of Internal Revenue.

Q. I am simply trying to get at the custom here which is that the Prohibition unit, or the office of the Commissioner of Internal Revenue, through the Commissioner of Prohibition, or some other representative, when an accusation has been made against an alleged violator of some section of the act, through some agency of that department, his permit is revoked, even though he has not yet been tried and convicted?

A. After a proper hearing; he is given fifteen days' notice.

Q. But after hearing before some officer or some agent of the Commissioner of Internal Revenue, or the Prohibition Commissioner?

A. He is given a proper hearing and proper legal representation.

Q. But it is all done by that unit just the same, or by some officer of it?

A. With proper legal representatives; yes, sir.

Q. And in none of these cases which you have mentioned, with the exception of one man, who pled guilty, there have as yet been no convictions, have there?

A. Those cases have all been very recent. They haven't been tried as yet.

Q. The fact remains that for some reason or other they have not yet been convicted?

A. They will take the regular court calendar.

Q. Some of them were in 1921?

A. No, sir.

Q. Aside from his being connected with the Duell Building and Loan Association, did you find any evidence of any kind to connect Mr. Bogash with any of these gentlemen, or with their liquor activities, legal or illegal?

[fol. 38] A. Only the office record.

Q. Please answer my question categorically. It is a fair question, and I am entitled to an answer to it. Did you find any evidence to connect Harry J. Bogash, or Joseph H. Klutsch, or Mr. Alpredt, with any of these gentlemen, or with any of their activities, other than the fact that Klutsch and Bogash were conveyancers for the Duell Building and Loan Association, of which these gentlemen had been officers and directors?

A. If I remember right, I think there were some papers there with Mr. Bogash's name.

Mr. Mehard: I have asked a question which can be answered yes or no, and can be explained afterwards. I ask that the witness be directed so to reply.

(Question and answer read.)

Mr. Mehard: I want that question answered yes or no, and then he can explain, of course.

The Court: The witness can answer.

Mr. Mehard:

Q. I will divide the question. You did discover that Mr. Bogash and Mr. Klutsch were conveyancers for the Duell Building and Loan Association, didn't you?

A. Yes, sir.

Q. And you furthermore discovered that these five or six gentlemen, who have been named here, were officers or directors of that company?

A. Yes, sir.

Q. Beyond their association in that company, did you find any connection between Mr. Bogash and any of these gentlemen in any business?

[fol. 39] A. If my memory serves me right, yes.

Q. What was it?

A. I believe that Mr. Bogash was a witness on the bond of Meyer Benedict for \$15,000, that he put up for a special permit.

Q. He was a witness on it?

A. Yes.

Q. He witnessed the signature of Mr. Benedict?

A. Yes.

Q. Would that, in your opinion, make Mr. Bogash responsible for what Mr. Benedict did in connection with that permit, or connect him in any way with Mr. Benedict's violation of the law?

A. In my opinion, in a business way, as an investigator, I would say his name appeared on papers connected with Mr. Benedict.

Q. That surely doesn't connect Mr. Bogash with any of Mr. Benedict's activities under that permit, does it?

A. I don't know that; I haven't investigated that end of it as yet.

Q. Isn't it a fact that other than his association with these men in this building and loan association, and these men having been accused of violations of the Prohibition Law, that other than you never discovered a single solitary thing reflecting upon the character or reputation of Harry J. Bogash, Mr. Klutsch or Mr. Alpredt?

A. I personally did not go into an extensive investigation.

Q. Did you personally see the letters which were written on behalf of these gentlemen when their application was made? Were they ever brought to your attention?

A. No, sir. The first time I saw that folder was this morning. [fol. 40] Q. Did you make any inquiry in Philadelphia about the general reputation of Mr. Bogash and Mr. Klutsch?

A. Only of the Government office records. That is the only thing I went into.

Q. Well, then, putting it in a nutshell, excepting for the fact that Mr. Bogash and Mr. Klutsch were connected with the Duell Building and Loan Association, and that these records which you examined disclosed that several officers of that association in collateral enter-

prises were connected with what you believed to be illegal liquor activities, you know nothing against Mr. Bogash and Mr. Klutsch at all?

A. No, sir.

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ANDREW A. QUIGLEY, a witness called on behalf of the respondents, having been duly sworn, testified as follows:

Direct examination.

Mr. Moore:

Q. I believe you are general prohibition agent stationed at Philadelphia?

A. Yes.

Q. Did you assist the witness who preceded you in an investigation as to the interests and associations of Mr. Bogash and Mr. Klutsch and certain officers of the Duell Building and Loan Association?

A. I did.

Q. You heard the testimony of Mr. Conner. For the purpose of brevity, would your testimony support the statements and averments he has made here under oath?

A. I would say that it would.

(No cross-examination.)

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[fol. 41] HARRY J. BOGASH, recalled, testified as follows:

Direct examination.

Mr. Mehard:

Q. I am not sure whether or not I asked you how many building and loan associations you were connected with.

A. Three or four—three.

Q. Three altogether?

A. Yes.

Q. Of which is the Duell Building and Loan Association one?

A. Yes.

Q. Are these associations substantially equally active?

A. They are all active. They all probably have anywhere from five hundred to a thousand members in the association.

Q. Have any of these officers who have been mentioned in connection with the Duell Building and Loan Association have anything to do with the other associations?

A. No, sir; each association is separate.

Q. What is your connection with these other associations?

A. I act as conveyancer. I am not conveyancer on the board

itself, but I place all the loans for them and have a certain arrangement with splitting the fees with the conveyancer.

Q. Your building and loan association activities are in connection with your real estate activities?

A. All of them, yes.

Q. Other than witnessing the signature of Mr. Benedict, to his application for a permit, do you know anything about it at all?

[fol. 42] A. Nothing at all.

Q. Did you, until the matter was brought to your attention, remember you ever had witnessed that signature?

A. No, it has been a long time ago. Now I recall the reason my signature is on there, is that I placed that insurance.

Q. The surety bond, you mean?

A. Yes, I placed the surety bond through the Fidelity Company.

Q. How many associations is Mr. Klutsch connected with?

+ A. Only the Duell.

Q. A building and loan association membership is made up of persons who buy shares in it?

A. Yes.

Q. And the board of directors are elected by those shareholders?

A. That is correct.

Q. Have you or had you at any time any control over who should be elected directors or officers?

A. No, sir. We are selected ourselves by the board. We have no control over it. The conveyancers and solicitors are elected by the board of directors.

Cross-examination.

Mr. Moore:

Q. Where are Mr. Benedict's offices with relation to yours?

A. I don't understand.

Q. Do you know where he conducts his business now?

A. No.

Q. Do you know where he did, in 1921?

A. At Sixth and Green.

[fol. 43] Q. Where was that, in regard to your office?

A. None at all; my office was at 1001 Chestnut Street.

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Counsel for both sides argued the case.

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#### OPINION

The COURT (THOMPSON):

Judge Schoonmaker and I concur in the belief that there is nothing in this record which would justify the Court in finding that the Commissioner of Internal Revenue, in refusing the application of the

plaintiff for a permit for the establishment of a denaturing plant, abused the wide discretion invested in him by the Act of Congress. We therefore feel that it is our duty, under this situation, to dismiss the bill of complaint, and an exception is granted to the plaintiff. A formal decree might be submitted, if it is necessary, which will be signed.

#### REPORTER'S CERTIFICATE

I hereby certify that the foregoing pages contain a correct transcript of all of the evidence taken in the trial in the case of Ma-King Products Company vs. David H. Blair, Commissioner Internal Revenue, at No. 1083 Equity; together with the offers of counsel, the objections thereto and rulings of the Court thereon.

L. D. Iams, Official Reporter, by N. Gangwisch.

Pittsburgh, Pa., July 11/24.

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#### JUDGE'S CERTIFICATE TO STATEMENT OF EVIDENCE

I, W. H. S. Thomson, Judge of the District Court of the United States for the Western District of Pennsylvania, hereby certify that [fol. 44] the foregoing is a true transcript of all the evidence, offers of counsel, objections thereto and the rulings of the Court thereon, in the case of Ma-King Products Company vs. David H. Blair, Commissioner Internal Revenue, at No. 1983 Equity; all of which, so certified, is ordered to be filed and to become a part of the record, this 11th day of July, 1924.

W. H. S. Thomson, Trial Judge.

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#### IN UNITED STATES DISTRICT COURT

JUDGMENT—Filed July 22, 1924

And now, to wit, this 22nd day of July, A. D. 1924, the foregoing proceeding having come before the Court for consideration upon Bill in Equity and Answer, and testimony having been taken in support of the same, upon consideration thereof, it is hereby ordered that the said Bill of Complaint is dismissed at the cost of the plaintiff.

Per Curiam.

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#### IN UNITED STATES DISTRICT COURT

EXCEPTION TO DECREE DISMISSING BILL—Filed Aug. 14, 1924

And now, to wit, August 14th, 1924, an exception is granted to the plaintiff in the above-entitled case to the Decree entered therein dismissing the Bill of Complaint.

W. H. S. Thomson, Judge.

[fol. 45] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERROR—Filed Sept. 12, 1924

The Learned Court Below erred in dismissing the Plaintiff's Bill of Complaint filed in the above-entitled cause, by entering the following Order and Decree:

"And now, to wit: this twenty-second day of July, A. D. 1924, the foregoing proceedings having come before the Court for consideration upon Bill in Equity and Answer, and testimony having been taken in support of the same, upon consideration thereof it is hereby Ordered that the said Bill of Complaint is dismissed at the cost of the plaintiff."

Louis Little, B. D. Oliensis, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed September 12, 1924

To the Honorable the Judges of the said Court:

The petition of Ma-King Products Company, a corporation organized and existing under the laws of the State of New Jersey, respectfully represents:

1. That on the 22nd day of July, 1924, a Decree was entered by your Honorable Court dismissing the Bill of Complaint of your Petitioner in the above-entitled case, at the cost of your Petitioner.

2. That your Petitioner considers itself aggrieved by the judgment in the Decree aforesaid, and herewith files its Assignment of Error setting forth specifically and particularly the error which your Petitioner assigns in said judgment, Decree and proceedings.

[fol. 46] Wherefore, your Petitioner prays that a Citation of Appeal issue and be served upon David H. Blair, the defendant in the above-entitled cause, according to the law, and in accordance with the rules and procedure in such cases; and that the transcript of the records of the proceedings, and papers on which said judgment and Decree were made, duly authenticated, may be sent to the said Circuit Court of Appeals.

Your Petitioner further prays for all orders necessary in the premises and for general relief.

Ma-King Products Company, by Harry Bogash, President.

CITY AND COUNTY OF PHILADELPHIA, ss:

Harry Bogash, being duly sworn according to law, doth depose and say: That he is the President of the Ma-King Products Company, a corporation organized and existing under the laws of the State of New

Jersey, and makes this affidavit of behalf of the said company, is duly authorized to do so, and that all the facts set forth in the foregoing Petition are true, and that this appeal is not taken for the purpose of delay, but because the Petitioner verily and fully believes that injustice has been done to it by the judgment and Decree aforesaid.

Harry Bogash.

Sworn to and subscribed before me this 2nd day of Sept. A. D. 1924. J. Harry Wagner, Notary Public. My commission expires January 21, 1927. Penna. Bldg., Phila., Pa. (Seal.)

[fol. 47] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Sept. 12th, 1924

The above and foregoing petition being considered, it is ordered that the Appeal prayed for by the Ma-King Products Company, in the above-entitled and numbered cause, to the United States Court of Appeals for the Third District, be and the same is hereby granted and allowed, and the said appeal may be prosecuted by the said Ma-King Products Company; and it is ordered that a Citation of Appeal issue and be served upon David H. Blair, the defendant therein, or his attorney of record, and that said appeal be made returnable to the said Circuit Court of Appeals for the Third Circuit, according to law, and in accordance with the rules of said Court.

Bail for costs in the sum of \$250. to be given.

W. H. S. Thomson, Judge.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Sept. 12, 1924

The Clerk of the said Court is hereby directed by the Plaintiff in the above-entitled cause, to make up a transcript of record of said cause in said Court, for transmission and appeal to the United States Circuit Court of Appeals, of the Third Circuit, from the Decree dismissing the Bill of Complaint filed therein, and in making up the same to include therein the following pleadings, papers and documents, being all of the record in the said cause material, relevant and pertinent to the issues raised by the said Bill:

[fol. 48] 1. Bill of Complaint.

2. Defendant's Answer.

3. Notes of testimony taken at the trial of this cause.

4. Opinion of the Court (Thomson, J.) handed down at the conclusion of the taking of the testimony.



5. Order of Court Dismissing Bill of Complaint.
  6. Exception to Decree dismissing Bill.
  7. Plaintiff's Assignment of Error.
  8. Application of Plaintiff for appeal from said Order, to the Circuit Court of Appeals.
  9. Order granting such appeal.
  10. Citation issued on such appeal.
  11. These directions for making up transcript of record.
- Louis Little, B. G. Oliensis, Attorneys for Plaintiff.

[fol. 48½] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE THIRD CIRCUIT

No. 3254 (List No. 96), October Term, 1924

MA-KING PRODUCTS COMPANY, Appellant,

vs.

DAVID H. BLAIR, Collector, Appellee

ARGUMENT AND SUBMISSION—Oct. 17, 1924

And afterwards, to wit, 17th day of October, 1924, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley, Circuit Judges, and Honorable Joseph L. Bodine, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 9th day of February, 1924, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 49] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Appeal from the District Court of the United States for the Western District of Pennsylvania

Before Buffington and Woolley, Circuit Judges, and Bodine, District Judge

OPINION—Filed Feb. 9, 1925

BUFFINGTON, Circuit Judge:

In the Court below The Ma-King Products Company, a corporate citizen of New Jersey, filed a bill in equity against David H. Blair,

Commissioner of Internal Revenue. It alleged it had duly made application, accompanied by proper bond, to said Commissioner for a permit to operate an alcohol denaturing plant; that under the law he was empowered and authorized to grant such permit, but he had "arbitrarily, illegally and without any reason or warrant in law or in fact" disapproved the application and refused to issue the permit. The bill prayed the Court to revoke the findings and disapproval of the Commissioner and order him to decree that he approve and grant the permit prayed for. Traversing the foregoing allegations of arbitrary and illegal conduct, the Commissioner made answer and further set forth that

"as the result of an investigation conducted by respondent's agents, is informed that Harry J. Bogash and Joseph H. Klutsch, respectively, President and Secretary-Treasurer of the petitioning company, are not individually, or as officers of said petitioner, entitled to be entrusted with a permit of the nature and kind set forth in said Bill of Complaint, or any other permit under the provisions of the National Prohibition Act, and that, therefore, your respondent, upon said information, acted under full warrant of law and fact in disapproving the application of the petitioning company and declining and refusing to issue the permit prayed for by the petitioners."

Testimony was taken by both sides and the case heard by Judges Thomson and Schoonmaker of the Western District of Pennsylvania, who concurred that there was nothing in the record to justify them "in finding that the Commissioner of Internal Revenue, in refusing the application of the plaintiff for the permit for the establishment of a denaturing plant, abused the wide discretion vested in him by the Act of Congress." From a decree dismissing the bill this appeal is taken.

After an examination of the proofs in the case we are of the opinion the associations and business connections of Bogash and Klutsch, the principal officers of this company, were such that the commissioner had ample ground for declining to issue the company the permit. The holder of such a permit is entrusted by the government with a power which subjects him to the approaches and bribes of law breakers and where, as in this case, the business associations of applicants have been with men whose conduct has already invited prohibition prosecutions against them, it goes without saying that the commissioner would have been derelict in duty in granting them a permit.

But the appellants raise the further question that the Commissioner has no discretionary power but his duty is mandatory to issue a permit. The controlling statutory law is plain. A brief reference to the pertinent parts shows the groundlessness of such contention. Section 6, Title II, of the National Prohibition Act provides:

"No one shall manufacture, sell, purchase, transport or prescribe any liquor without first obtaining a permit from the Commissioner so to do" and

"In the event of the refusal of the Commissioner of any application for a permit, the applicant may have a review of his decision before a Court of Equity in the manner provided in Section 5 hereof."

That section provides:

"The manufacturer may yet appropriate proceeding in a Court of Equity, have the action of the Commissioner reviewed, and the Court may affirm, modify or reverse the findings of the Commissioner as the facts and law of the case may warrant."

The last phrase "as the facts and law of the case may warrant," shows that Congress meant the Commissioner was to have, not the mere mandatory clerical duty of signing a permit, but the discretionary and responsible one of considering facts and law before he determined whether he would permit manufacture. If issue of the permit were mandatory on the Commissioner, why give the Court jurisdiction to "affirm, modify or reverse the finding of the Commissioner as the facts and law of the case may warrant?"

That the Court was empowered to review the "findings of the Commissioner" and was given power to affirm, modify or reverse such finding, shows that what the Commissioner was to do was not the perfunctory signing of a formal permit, but the responsible duty of determining whether this high permissive privilege and permit should be issued to an applicant.

So holding, this appeal is dismissed at appellant's costs, and as the act provides for affirmative action by the Court, the mandate will direct that there be added to the decree below dismissing the bill these words: "and the finding of the Commissioner is affirmed."

[File endorsement omitted.]

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[fol. 51] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Appeal from the District Court of the United States for the Western  
District of Pennsylvania

JUDGMENT—Filed Feb. 9, 1925

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the appeal from the decree of the said District Court in this cause be, and the same is hereby dismissed,

with direction that the following words be added to the decree of the District Court: "and the finding of the Commissioner is affirmed".

Per Curiam,

Buffington, Circuit Judge.

Philadelphia, February 9, 1925.

[File endorsement omitted.]

[fol. 52] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ASSIGNMENT OF ERROR—Filed March 13, 1925

The learned Circuit Court of Appeals, for the Third Circuit, erred in dismissing the Appeal in the above-entitled case and in affirming the Judgment and Decree of the District Court of the United States for the Western District of Pennsylvania, from which Judgment and Decree the said Appeal was taken, by entering the following Order and Decree:

"So holding, this appeal is dismissed at appellant's costs, and as the act provides for affirmative action by the Court, the mandate will direct that there be added to the decree below dismissing the bill these words: 'and the finding of the Commissioner is affirmed.'"

B. D. Oliensis, Attorney for Appellant.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR APPEAL—Filed March 13, 1925

To the Honorable the Judges of the said Circuit Court of Appeals:

The Petition of Ma-King Products Company, a corporation organized and existing under the laws of the State of New Jersey, respectfully represents:

1. That on the 9th day of February, 1925, a Decree was handed down by your Honorable Court, in the above entitled cause, dismissing your petitioner's Appeal from the Decree of the District Court of the United States for the Western District of Pennsylvania, wherein your petitioner was plaintiff, and the said David H. Blair, defendant, and affirming the Judgment of the said District Court in the proceeding aforesaid.

2. That your petitioner considers itself aggrieved by the affirmation of the Judgment and Decree aforesaid, and herewith files its Assignment of Error setting forth specifically and particularly the error [fol. 54] which your petitioner assigns to the said Judgment and Decree of Affirmation of your Honorable Court.

Wherefore, your petitioner prays that a Citation of Appeal issue and be served upon David H. Blair, the appellee in the above-entitled cause, according to law, and in accordance with the rules and procedure in such cases; and that the transcript of the record of the proceedings, and papers on which the said Judgment and Decree of Affirmation were made, duly authenticated, may be sent to the Supreme Court of the United States.

Your Petitioner further prays for all orders necessary in the premises and for general relief.

Ma-King Products Company, by Harry J. Bogash, President.

CITY AND COUNTY OF PHILADELPHIA, ss:

Harry Bogash, being duly sworn according to law, doth depose and say: That he is the President of the Ma-King Products Company, a corporation organized and existing under the laws of the State of New Jersey; that he makes this affidavit on behalf of the said company, and is duly authorized to do so; that all the facts set forth in the foregoing Petition are true, and that this appeal is not taken for the purpose of delay, but because the Petitioner verily and truly believes that an injustice has been done to it by the Judgment and Decree aforesaid.

Harry J. Bogash.

Sworn to and subscribed before me this 12th day of March, 1925. J. Harry Wagner, Notary Public. My commission expires January 21, 1927. Penna Bldg., Phila., Pa. (Seal.)

[File endorsement omitted.]

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[fol. 55] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER ALLOWING APPEAL—Filed March 13, 1925

The above and foregoing petition being considered it is ordered that the Appeal prayed for by the Ma-King Products Company, in the above-entitled and numbered cause, to the Supreme Court of the United States, be and the same is hereby granted and allowed, and the said appeal may be prosecuted by the said Ma-King Products Company; and it is ordered that a Citation of Appeal issue and be served upon David H. Blair, the defendant therein, or his attorney of record, and that said appeal be made returnable to the said Su-

preme Court of the United States, according to law, and in accordance with the rules of said Court.

Bail for costs in the sum of \$250 to be given.

Buffington, Circuit Judge.

[File endorsement omitted.]

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[fol. 56] BOND ON APPEAL FOR \$250—Approved and filed March 18, 1925; omitted in printing

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[fol. 57] CITATION—In usual form, showing service on C. W. Nash; omitted in printing

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[fol. 58] IN UNITED STATES CIRCUIT COURT OF APPEALS

#### CLERK'S CERTIFICATE

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original transcript of record and proceedings in this Court in the case of Ma-King Products Company, a corporation etc., vs. David H. Blair, Commissioner of Internal Revenue, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed by name and affixed the seal of the said Court, at Philadelphia, this 20th day of March in the year of our Lord one thousand nine hundred and twenty-five and of the Independence of the United States the one hundred and forty-nine.

Saunders Lewis, Jr., Clerk of the U. S. Circuit of Appeals,  
Third Circuit. (Seal of United States Circuit Court of  
Appeals. Third Circuit.)

Endorsed on cover: File No. 30,984. U. S. Circuit Court of Appeals, Third Circuit. Term No. 333. Ma-King Products Company, appellant, vs. David H. Blair, Commissioner of Internal Revenue of the United States. Filed March 27th, 1925. File No. 30,984.

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Bail for costs in the sum of \$250 to be given.

Buffington, Circuit Judge.

[File endorsement omitted.]

[fol. 56] BOND ON APPEAL FOR \$250—Approved and filed March 18, 1925; omitted in printing

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[fol. 58] IN UNITED STATES CIRCUIT COURT OF APPEALS

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